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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

**DUPAGE BANK AND TRUST COMPANY,**
**as Trustee of Trusts Nos. 2602 and 2439,**
*Petitioner,*

v.

**PROPERTY TAX APPEAL BOARD OF THE ILLINOIS DEPARTMENT OF REVENUE; THE McHENRY COUNTY BOARD OF REVIEW, THE COUNTY OF McHENRY, ILLINOIS, a body corporate and politic; and the TOWN OF ALGONQUIN, a body corporate and politic,**
*Respondents.*

**On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District**

## BRIEF IN OPPOSITION OF RESPONDENT PROPERTY TAX APPEAL BOARD OF THE STATE OF ILLINOIS

NEIL F. HARTIGAN
Attorney General, State of Illinois
SHAWN W. DENNEY
Solicitor General, State of Illinois
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-3312
*Attorneys for the Property Tax Appeal Board*

ROSALYN B. KAPLAN *
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-3698
*Of Counsel*

* Counsel of Record

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## QUESTION PRESENTED

Whether the equal protection clause of the fourteenth amendment prevents a State from imposing disparate tax burdens on parcels of real property which have been properly placed in different, legitimate classifications?

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**On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District**

## BRIEF IN OPPOSITION OF RESPONDENT PROPERTY TAX APPEAL BOARD OF THE STATE OF ILLINOIS

The respondent Property Tax Appeal Board of the State of Illinois respectfully requests that this Court deny the petition for a writ of certiorari, seeking review of the opinion of the Appellate Court of Illinois in this case.

## STATEMENT OF THE CASE

The petitioner (hereafter referred to as the taxpayer) challenged the 1981 assessment of its 107-acre parcel of real estate by comparing the treatment of this property with the assessments of three other parcels claimed to be similar. The taxpayer's property was not entitled to be assessed as farmland or open space during the tax year at issue; however, the parcels cited for comparison purposes were assessed on the basis of their classification as farmland or open space, in accordance with Sections 20e and 20g-l of the Illinois Revenue Act of 1939, as amended, Ill. Rev. Stat. ch. 120, ¶¶ 501e, 501g-l (1985). The taxpayer has not challenged the State's right to make these classifications in its taxing statutes.

## REASONS WHY THE PETITION SHOULD BE DENIED

### THIS COURT'S DECISION IN *WALTERS V. CITY OF ST. LOUIS* DOES NOT PREVENT THE DISPARATE TAX TREATMENT OF PARCELS OF PROPERTY WHICH HAVE BEEN PROPERLY PLACED IN DIFFERENT CLASSIFICATIONS BASED UPON SUBSTANTIAL AND LEGITIMATE DISTINCTIONS.

By isolating a single phrase from the opinion of this Court in *Walters v. City of St. Louis*, 347 U.S. 231 (1954), the taxpayer attempts to demonstrate that equal protection not only requires a reasonable basis for legislative classification of property subject to taxation, but also man-

dates against disparate treatment of separate classes of property. The taxpayer has erroneously converted one aspect of the test for determining the legitimacy of a legislative classification into an additional and novel requirement that differently classified objects of taxation must be treated similarly in order for a taxing scheme to survive a fourteenth amendment challenge.

Equal protection principles neither require nor suggest that state legislation must accord similar treatment to members of different legislative classes, unless the classes themselves are based upon impermissible distinctions. No challenge is made in this case to Illinois' decision to classify farmland and open space differently from other real property, and its classifications are entitled to a presumption of constitutionality, *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809 (1969), which remains unrebutted in the context of this case. Thus, the taxpayer can demonstrate no error in the state appellate court's application of the fourteenth amendment, and its petition for a writ of certiorari should be denied.

**1. The Taxpayer Has Misconstrued This Court's Decision In *Walters*.**

In *Walters*, the appellants challenged the validity of an ordinance which separately classified wage earners and self-employed persons for taxation purposes. The objective of this Court was to determine whether this legislative distinction ran afoul of the fourteenth amendment. The classification survived this challenge, with the Court refusing to conclude that the difference between wages and profits was "insignificant or fanciful." 347 U.S. at 237. This holding was followed by the explanatory paragraph from which the taxpayer has drawn the phrase upon

which it now relies. That paragraph, quoted more fully, states that:

> [t]he power of the State to classify according to occupation for the purposes of taxation is broad. Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary. (Citations omitted) "In its discretion it may tax all, or it may tax one or some, taking care to accord to all *in the same class* equality of rights." (Citation omitted; emphasis in original).

This explanation establishes the requirement that the classifications themselves be based upon meaningful distinctions, not that there be a similarity in the treatment of separate and distinct classes. The particular language upon which the taxpayers relies, the statement that different treatment should not be "so disparate, relative to the difference in classification, as to be wholly arbitrary," *id.*, serves only to protect taxpayers from unequal treatment on the basis of trivial distinctions. However, separate, legitimate classes may be treated very disparately without violating the Constitution; one class may be subject to taxation while another is completely exempt. The above language from *Walters* expressly permits such disparate treatment.[1]

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[1] After it determined that the classifications were appropriately drawn, the *Walters* Court did not proceed to examine the extent of the disparity between tax rates applied to the separate classifications. Therefore, if the contention of the taxpayer in the present case were correct, it would be relying on a statement which was not necessary to the Court's holding and which, therefore, is not binding authority for the proposition which taxpayer asserts. *Kastigar v. United States*, 406 U.S. 441, 454-55 (1972).

The extent of permissible disparity in tax treatment of different classes is well demonstrated by one of the cases relied upon by the *Walters* Court. In *Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U.S. 412 (1937), the Court upheld a state license tax upon chain store operators, where the legislature graduated the tax rate based in part upon the number of the stores in the chain. Depending upon the size of the chain, the license fees varied from $10.00 to $550.00 per store; thus, one individual license might cost 55 times more than another.[2]

The *Grosjean* Court's decision examined not the disparity between the tax rates as applied to each individual store, but rather the State's decision to classify chains according to the total number of operating stores. Finding that the classification rested on reasonable distinctions, the Court concluded that no constitutional violation was shown: "[t]he statute bears equally upon all who fall into the same class, and this satisfies the guaranty of equal protection." 301 U.S. at 424.

By misconstruing a single phrase from *Walters*, and by focusing upon the alleged similarities of its property to other parcels taxed at lower rates (although no findings as to such similarities were made by the Property Tax Appeal Board in its capacity as trier of fact), the taxpayer has ignored the meaningful, legitimate basis for the different tax treatment of allegedly comparable property: the legislative decision to encourage preservation of farmland and open space by classifying that property separately for purposes of real estate taxation and taxing it at a lower rate. *See Hoffmann v. Clark*, 69 Ill. 2d 402, 372 N.E.2d 74, 86 (1977). *See also Weissinger v. White*, 733 F.2d 802

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[2] This disparity is more than twice that complained of by the taxpayer in the instant case.

(11th Cir. 1984). As previously noted, no challenge has been raised here with respect to the validity of these classifications. According to the *Walters* analysis, the State could, consistently with fourteenth amendment principles, decide to exempt farmland property from any tax whatever. Certainly, then, the degree of disparity between tax rates for real property cannot demonstrate the basis for a viable equal protection challenge, so long as the classifications themselves are based upon substantial differences.

The taxpayer's argument that Illinois' property tax laws conflict with the *Walters* decision is not well founded and does not present any question meriting the attention of this Court. Therefore, the petition for a writ of certiorari should be denied.

**2. Other Cases Relied Upon By The Taxpayer Do Not Demonstrate That Disparate Treatment Of Different Classes Violates The Equal Protection Clause When The Classifications Themselves Are Proper.**

In *Hanover Fire Insurance Co. v. Carr*, 272 U.S. 494 (1926), this Court did, as the taxpayer explains, declare unconstitutional an Illinois tax sought to be imposed on foreign corporations. What the taxpayer fails to observe, however, is that the reason for this holding was the State's impermissible classification of corporations as domestic or foreign for purposes of raising revenue. The taxpayer's statement that "[t]he Court was not concerned with the form of the two classifications . . . ," Petition at 11, is simply incorrect. *See, e.g., Hanover, supra* at 511, where the Court explained that "after its admission [to do business in Illinois], the foreign corporation stands equal, and is to be classified, with domestic corporations of the same kind." The disparate taxing scheme

examined in *Hanover* cannot be usefully compared with that at issue in the present case, where different tax rates have been applied on the basis of real and substantial differences in the properties subject to assessment.

The taxpayer's reference to two decisions of the Illinois Supreme Court is similarly unavailing. In *People ex rel. Toman v. Olympia Fields Country Club*, 374 Ill. 101, 28 N.E.2d 109 (1940), no equal protection issue was ever addressed by the court, which described the question presented as one of alleged constructive fraud. The court did embark upon a discussion of the state constitution's requirement of uniformity in taxation, but concluded that this constitutional provision "means uniformity as applied to a class. No prohibition against classification of property and taxpayers into different classes can be read into the [Illinois] Constitution." 28 N.E.2d at 110.

A case construing the uniformity clause of a state constitution is not relevant to the fourteenth amendment concerns which may be addressed by a federal court. *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362, 368 (1940). Even assuming, however, that *Olympia Fields* were in some way relevant to the issue presented in the case at bar, it could serve only to refute the theory which the taxpayer advances to this Court. The Illinois Supreme Court plainly held that the assessments were proper in the former case because the comparable properties cited by that taxpayer were, in fact, correctly placed in different classifications. The same justification exists for the assessment which the taxpayer in the present case is now challenging.

Finally, in *Department of Revenue v. Warren Petroleum Corp.*, 2 Ill. 2d 483, 119 N.E.2d 215 (1954), the state supreme court examined a taxing scheme which did establish

different modes of taxation for foreign and domestic companies. However, the tax burdens imposed by the differing statutory provisions were substantially equal; as the complaining taxpayer could not show any adverse impact to it, the court held that this taxpayer had no standing to raise an equal protection challenge. 119 N.E.2d at 219. Moreover, the court went on to observe that any discrimination imposed by these tax laws was justified on the basis of the valid classifications of the different types of taxpayers. Contrary to the characterization of this decision in the petition pending before this Court, the *Warren Petroleum* Court acknowledged that, even if the taxpayer in that case had alleged substantial discrimination against it, such discrimination "must be upheld as based upon a reasonable difference in circumstances between the appellee and domestic car line companies." 119 N.E.2d at 220.

In the present case, the taxpayer's omission of any challenge to the State's classifications of real property requires the conclusions that the classifications are constitutional and that no substantial federal question can be raised against the statutory scheme under these circumstances. Therefore, no reason exists for the grant of certiorari.

## CONCLUSION

For the foregoing reasons, the Property Tax Appeal Board of the State of Illinois respectfully requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

NEIL F. HARTIGAN
Attorney General, State of Illinois

SHAWN W. DENNEY
Solicitor General, State of Illinois

100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-3312

*Attorneys for the Property Tax Appeal Board*

ROSALYN B. KAPLAN *
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 917-3698

*Of Counsel*

* Counsel of Record.